

SYMPOSIUM: RE-THINKING RELIGIOUS FREEDOM

EDITORS' INTRODUCTION

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Religious freedom is often framed triumphally in the United States, in both popular and academic venues, as a political condition that predominantly originated in, emanates from, and is guaranteed by, the United States. While gestures are made by various US spokespersons toward international instruments, religious freedom is still frequently spoken of as a singular American good that needs to be brought to others who have been identified as lacking it. Americans and others also put forward the achievement of religious freedom as *the* best solution to a remarkable range of contemporary problems in a variety of contexts. Advocates seem to take it for granted that religious freedom refers to an observable and measurable social fact, one that is subject to objective legal interpretation and available for legal regulation and amelioration.

Yet what is meant by religious freedom has never been stable and continues to change, both in the United States and elsewhere. The meaning of religious freedom is being pluralized and transformed in and through legal, religious, and political contestations in a variety of contexts, as well as through a flowering of scholarly attention to its anthropology and history. While the last two decades have witnessed a clamor of claims for religious liberty, it remains far from clear what, exactly, governments, human rights activists, religious groups, and religious minorities actually mean when they claim legal protection for their religious rights: What happens when religious freedom is conceived in legal terms? What is meant by religion in these contexts? Does it make a difference whether an individual or a group claims a right? What is the backstory to this moment of proliferating advocacy efforts on behalf of religious freedom? And what evidence could be mobilized to prove that lack of religious freedom is, indeed, the cause of the many evils claimed for it?

Premised upon the assumption that religious freedom is not in fact a singular phenomenon, or even a single ideal, but a constellation of quite disparate ideas and practices, the project Politics of Religious Freedom: Contested Norms and Local Practices (PRF), funded by the Henry R. Luce Initiative on Religion and International Affairs, was established in 2010 to study the legal and political contestation surrounding religious freedom and the rights of religious minorities in a variety of countries in Europe, the Middle East, and South Asia, as well as the United States.¹ The objective of the project was to reorient thinking about legal and political protections for religious freedom. Such a reorientation demands both a re-thinking and re-description of the historical and cultural assumptions underlying these national and international projects and a reconsideration of its proper means and ends. It requires that we ask whether advocacy for *religious* freedom, given its manifold deployments and limitations, is the best way to achieve peaceful coexistence for the variety of persons involved.

1 We would like to acknowledge the Henry R. Luce Initiative on Religion & International Affairs for their support for this project. A special thanks to Toby Volkman of the Foundation for her support for the project and thoughtful contributions to the conversation. For more on the project see <http://politics-of-religious-freedom.berkeley.edu/>.

The PRF project, among other efforts to revisit the received wisdom,² has worked toward these aims and objectives by generating a body of research and writing on the history and politics of religious freedom.³ This interdisciplinary and cross-cultural work is designed to inform contemporary academic and policy debates, international human rights circles, and local civil society organizations involved in these issues. The project explores different understandings of religious freedom in an attempt to de-center conceptualizations that have long dominated the discussion in North American and international policy circles. It discerns and engages with a broader and more diverse field of practices than conventionally designated and defended under the rubric of “religious freedom” in mainstream debates. By making these alternatives available, the project seeks to provide new templates for thinking about the question of religious freedom in relation to the politics of human rights, conflict resolution, the role of law, government policy, and the politics of religious difference, both within and among religious communities.

Each of the articles in this symposium issue of the *Journal of Law and Religion* contributes to these efforts. Together they make the case that religious freedom, not unlike other fundamental freedoms invented in the last century, has had multiple foundings and re-foundings. Focusing on these various contexts suggests that the dominant understanding of religious freedom in many international policy circles needs to be reconsidered. On this view religious freedom is too often seen as the proud achievement of a Christian-majority West, finding its origins in an enlightenment-era reform of religion that is gradually being extended to all corners of the world through the tireless efforts of those who care about the welfare of their fellow humans, even in the face of constant threats from dark forces that are opposed to human liberty and progress. Our work, along with that of others, suggests that there is a more complex set of stories to be told about religious freedom.

The articles that follow were each presented at a workshop held as part of the PRF project. The first workshop was held in July 2011 at the European Inter-University Center for Human Rights and Democratization in Venice, Italy, and focused on European law and the politics of religious

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- 2 Other such efforts to reconceive the meaning of religious liberty include Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton, NJ: Princeton University Press, 2005); Elizabeth Shakman Hurd, *Beyond Religious Freedom: The New Global Politics of Religion* (Princeton, NJ: Princeton University Press, forthcoming 2015); Saba Mahmood, “Religious Freedom, the Minority Question, and Geopolitics in the Middle East,” *Comparative Studies in Society and History* 54, no. 2 (2012): 418–46; Peter Danchin, “The Emergence and Structure of Religious Freedom in International Law Reconsidered,” *Journal of Law and Religion* 23, no. 2 (2008): 455–534; “Religion, Law and Human Rights,” ed. Winnifred Fallers Sullivan and Rosalind Hackett, special issue, *Culture and Religion* 6, no. 1 (2005); Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2012); Courtney Bender and Pamela E. Klassen, eds., *After Pluralism: Reimagining Religious Engagement* (New York: Columbia University Press, 2010); Johan D. van der Vyver and John Witte, Jr., *Religious Human Rights in Global Perspective: Legal Perspectives* (Dordrecht, NL: Martinus Nijhoff Publishers, 1996); Benjamin J. Kaplan, *Divided by Faith: Religious Conflict and the Practice of Toleration in Early Modern Europe* (Cambridge, MA: Belknap Press of Harvard University Press, 2010); Webb Keane, *Christian Moderns: Freedom and Fetish in the Mission Encounter* (Berkeley: University of California Press, 2007); and Lila Abu-Lughod, “Against Universals: The Dialects of (Women’s) Human Rights and Human Capabilities,” in *Rethinking the Human*, J. Michelle Molina and Donald K. Swearer, eds. (Cambridge, MA: Harvard University Press, 2010), 69–94.
- 3 Other papers from these workshops and conferences are available in “Politics of Religious Freedom: Contested Genealogies,” ed. Saba Mahmood and Peter G. Danchin, special issue, *South Atlantic Quarterly* 113, no. 1 (2014); a collection of essays at the Social Science Research Council’s online discussion forum: Elizabeth Shakman Hurd and Winnifred Fallers Sullivan, “Politics of Religious Freedom,” *The Immanent Frame* (blog), accessed July 10, 2014, <http://blogs.ssrc.org/tif/the-politics-of-religious-freedom>; Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Peter Danchin, and Saba Mahmood, eds., *Politics of Religious Freedom* (Chicago: University of Chicago Press, forthcoming); and a special issue of the *Maryland International Law Journal* (forthcoming).

freedom. The second workshop, held in Chiang Mai, Thailand, in December 2012, focused on the politics of religious freedom in South and Southeast Asia. The third workshop, held in Cairo, Egypt, in January 2013, examined religious freedom in the Middle East and North Africa region. While each workshop focused primarily on one region, the organizers also sought to maintain the comparative, historical, and transnational perspective that is one of the distinguishing features of the project. Each workshop mapped out “nodal points” around which disagreements over religious freedom have taken shape, including religious freedom as an individual or collective right, the place of religious minorities and the protections accorded to them, the proper relationship of religion and the state, the place of religious freedom in international law and politics, definitions of religion, and what it can mean to render religion “free.”

Several of the articles reveal how the politics of religious freedom has been shaped by a majoritarian politics to serve its own ends. C. S. Adcock explores the effect of the European origins of the word “religion” in the context of what she calls the “politics of translation” in early twentieth-century India, where the ritual *shuddhi* was described as proselytization and condemned, while the Tolerance idea provided cover for a suppression of caste politics. Majoritarian politics also animate Benjamin Schonthal’s contribution, in this case, a Buddhist, nationalist constitutional politics of Sri Lanka, which privileged a Buddhist majority notwithstanding commitments to an egalitarian exercise of religious freedom. Noah Salomon offers an on-the-ground view of the emerging constitutional settlement in South Sudan, documenting the paradox of the new state’s effective “minoritization” of its Muslim citizens, while simultaneously guaranteeing religious freedom under law. His essay underscores the complexities entailed by advocacy for and constitutional protection of religious freedom in the politics of emerging democracies. Leaders of religious minorities often benefit from understandings with majority governments, under the banner of religious freedom, that serve to suppress or displace internal dissent. Such a politics has been at work in Egypt and Kyrgyzstan, as shown by Paul Sedra and Mathijs Pelkmans in their contributions, as well as in the United States today, with respect to contraceptive coverage.⁴ Highlighted in these essays is the role that law plays in fostering the working of diverse societies, on the one hand, in Mughal India and Canada, for example, as discussed by Nandini Chatterjee and Benjamin Berger, and the role it plays in constricting religious life, on the other, as Elizabeth Hurd shows in the case of the Alevis in Turkey.

There is a sense in which promoting the right to religious freedom always entails a simultaneous restriction of religious freedom. Studying local contexts and their histories brings this paradox into sharp relief, as, for example, in Pelkmans’s account of the unexpected dynamics of religious freedom and religious repression in post-Soviet Central Asia. In other contexts, such as in Egypt, concern for the persecution of Christians over other minorities has exacerbated local sectarian tensions and heightened rather than alleviated inter-religious conflict. The temptation to quickly ascribe violence to religious or sectarian difference also risks obscuring complex causal questions involving politics, governance, and the role of outside actors in generating and sustaining conflict. Promoting religious freedom can harden lines of division between communities by defining identities and interests in religious terms.

A single-minded focus on religious freedom can also obscure other important historical processes. As Adcock shows in her discussion of the politics of conversion in Indian history, a focus on religious freedom can render inaccessible complex dynamics of caste and class that cannot be reduced to “religion.” Other histories are obscured when religion and religious difference are

4 Winnifred Fallers Sullivan, “The Impossibility of Religious Freedom,” *The Immanent Frame* (blog), July 8, 2014, <http://blogs.ssrc.org/tif/2014/07/08/impossibility-of-religious-freedom/>.

imposed as the exclusive interpretive rubrics for understanding social and political history. Escaping the confines of these categories through careful historical analysis, Chatterjee's account of the pre-colonial history of personal status laws explores the late Mughal use of *shari'a* in governing non-Muslim populations—a system she describes as “permissively inclusive.” Chatterjee's contribution challenges widely held assumptions about Mughal governance and, in particular, its presumed inferiority to the British colonial forms that replaced it.

What is gained and lost when religious freedom is articulated, through the lexicon of liberal rights, as a set of discrete freedoms claimed by autonomous units (individuals or groups) from an assumedly neutral state, and when religious rights are adjudicated through modern legal procedures? What claims can and cannot be made regarding religion, personhood, freedom, and so forth in such a legal regime? What modes of religiosity, notions of religious difference (or non-difference), and idioms of social order and harmony are rendered unintelligible or incoherent? What kinds of religious subjects are presumed and created by the various formulations of religious freedom? Does claiming a right to religious freedom require that one be able to identify core, essential elements of each “religion?” Is religious freedom necessarily a majoritarian discourse? Could one recuperate alternative ways of being religious outside of the penumbra of state power? Would these ways of being religious be legible as “religion?” What does international religious freedom signify in a context in which Euro-American understandings of religion, and related constructs such as religious tolerance, have diversified beyond the protestant forms around which they were originally articulated and institutionalized?⁵ How is the protection of religious and sexual minorities balanced with universalist conceptions of civil and political rights? Each of these cross-cutting themes and questions, which also have precedents in earlier histories, appear in these essays as they play out in Africa, in south and southeast Asia, in the post-Soviet republics, as well as in older democracies such as Canada and the United Kingdom. These themes and questions are also at the center of the ongoing revolts in the Middle East and North Africa and their unfolding dynamics.

The articles collected here share a degree of skepticism about efforts to universalize and legally protect religious freedom as the answer to the many challenges of collective social and political life today. A common thread running through the papers, exemplified in Berger's call for modesty as a functional virtue of law and legal practice, is a reticence to prescribe solutions and a sense of humility in the face of the challenges posed by deep social and normative diversity.

The need for epistemological and normative humility in this work was underlined by one of the presentations at the Cairo workshop. As with our other workshops in Venice and in Chiang Mai, participants included scholars of the region and those more comparatively and theoretically inclined, as well as activists and advocates. There were historians, anthropologists, political scientists—and legal scholars. We heard about the religious politics of the world's newest state, South Sudan; about advocacy of American evangelicals on behalf of Sudanese Christians; and about the early twentieth-century politics of the Arya Samaj in India; as well as about the ongoing project of reinvention, and retrenchment, underway in Egypt. We heard comments from an historian writing the global history of toleration and a legal historian writing a history of international legal provisions guaranteeing religious freedom. But most striking in many ways were the remarks of Hossam Baghat, one of the founders and leaders of the Egyptian Initiative for Personal Rights (EIPR), a key Egyptian civil rights organization.

Baghat spoke of the EIPR's efforts to document and count the number of incidents of conflict characterized in the international press as incidents of Muslim-Christian violence. In many cases,

5 See Evan Haefeli, *New Netherland and the Dutch Origins of American Religious Liberty* (Philadelphia: University of Pennsylvania Press, 2012).

he recounted, these events begin as arguments over a purchase or a trivial misunderstanding and then escalate as others get involved. Counting and characterizing these disputes as incidents of what is called in the international media “religious violence” caused by “sectarianism” is central to a politics of local containment and arguably of various forms of neo-colonialism and imperialism. It is not just Egypt: these words have been used recently to describe conflict in Burma, the Central African Republic, Thailand, Iraq, and Syria. “Religious hatred” and “sectarianism” are increasingly understood to cause violence. The proposed solution is often assumed to be the rule of law—the secular rule of law—and “reformed,” “good” religion: a duo that together provide the necessary conditions for religious freedom.

Conscious of the use to which statistics would be put, in his remarks Bahgat carefully described the protocol used by the EIPR to investigate each reported incident of conflict between Coptic and Muslim Egyptians to ensure accurate records, a protocol that requires checking and double-checking with multiple witnesses. In a striking remark he concluded, “We really don’t know the causes of these events.” It was not entirely clear what he meant, but he seemed to be suggesting that the violence that ensued should not be readily attributed to “religious” difference in a country where that difference has often not made a difference. In other words, he was suggesting that perhaps these events are not properly understood as being about religious difference because to do so implies that something called religion—something we have already acknowledged as indeterminate and unstable—has a recognizable, isolable, and measurable—even predictable—effect in the world, whether for good or ill. If religion is not the problem, perhaps religion is not the solution.

The larger context for discrimination and violent conflict in Egypt—or anywhere—is a complex one. Coptic Christians and other Egyptians have not always been at odds politically. They worked together against the British, for example, to establish an independent Egypt. Stories of Christian-Muslim peaceful coexistence in Egypt abound. Why now this tension? One cause was the cynical and self-serving politics of Pope Shenouda, the recently deceased Coptic pope. Close to Hosni Mubarak and his predecessors, Shenouda, working in the name of the Coptic Church but also to consolidate his authority over Coptic elites and the laity, as described by Paul Sedra in this issue, effectively suppressed internal diversity and dissent in the Coptic community. Another more recent cause of tension is advocacy on behalf of Copts by Americans and others who see persecution of Christians as a global crisis, motivating rescue efforts and a polarizing international intervention that hinges on distinguishing Copts from other Egyptian citizens along sectarian lines.

In a field in which people around the world confidently use the Copts as an easy reference—one that can instantly call to mind for the listener the reason why getting religious freedom right is so important—the events themselves and their contexts are often not carefully considered. Bahgat’s words should sober us. Coming from a courageous advocate for personal liberty, they should remind us how little we know about what motivates violent incidents and how slow we should be to name them as religiously motivated.

“Sectarian” has been a key word in the jurisprudence of the US Supreme Court as well as in the media, particularly in the school funding and school prayer cases. It has been used to divide “bad” religion from “good” religion, “un-American” religion from “American” religion. Is that not also what is happening in the press today when we name and count incidents of what we call religious violence? To be “sectarian” is to be dangerous and uncivilized. One’s religion needs to be tamed to fit the requirements of law. Can law do this work when “we [still] really don’t know the causes of these events?”

The articles in this volume, taken together, ask us to slow down and consider the complexity of the social history that is being lumped together to justify intervention under the banner of campaigns for religious freedom.